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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT TACOMA

8                   MICHAEL DENTON,

9                   Plaintiff,

10                  v.

11                  TIM THRASHER, et al.,

12                  Defendants.

CASE NO. 3:18-cv-05017-BHS-DWC

ORDER DIRECTING SERVICE OF  
CIVIL RIGHTS COMPLAINT

13                  This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding  
14 with this action *pro se* and *in forma pauperis*. Plaintiff is currently incarcerated at the  
15 Washington State Penitentiary and is subject to the Court's Prisoner E-Filing Initiative pursuant  
16 to General Order 06-16. The Court, having reviewed plaintiff's complaint, hereby **ORDERS** as  
17 follows:

18                  (1)     Service by Clerk

19                  The Court has entered a Report and Recommendation recommending several Defendants  
20 be dismissed. The Court recommended only Defendants Tim Thrasher, Dr. Karie Rainer,  
21 Lindsey McIntyre, Keith Goodenough, "Officer Scholls," "Lt. Moore," Jaime Davis, Sgt.  
22 William Fletcher, "Lt. Miller," David McKinney, Scott Russell, and "Officer O'Reilly" remain  
23

1 in the case. Dkt. 21. Plaintiff has included the purported addresses of these defendants in his  
2 Amended Complaint. Dkt. 18-2.

3           The Clerk is directed to send the following to the above noted defendants by email: a  
4 copy of plaintiff's complaint, a copy of this Order, a copy of the notice of lawsuit and request for  
5 waiver of service of summons, and a waiver of service of summons.

6           (2)    Response Required

7           Defendant(s) shall have **thirty (30) days** within which to return the enclosed waiver of  
8 service of summons. A defendant who timely returns the signed waiver shall have **sixty (60)**  
9 **days** after the date designated on the notice of lawsuit to file and serve an answer to the  
10 complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

11           A defendant who fails to timely return the signed waiver will be personally served with a  
12 summons and complaint, and may be required to pay the full costs of such service, pursuant to  
13 Rule 4(d)(2) of the Federal Rules of Civil Procedure. A defendant who has been personally  
14 served shall file an answer or motion permitted under Rule 12 within **thirty (30) days** after  
15 service.

16           (3)    Filing and Service by Parties, Generally

17           All attorneys admitted to practice before this Court are required to file documents  
18 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,  
19 [www.wawd.uscourts.gov](http://www.wawd.uscourts.gov), for a detailed description of the requirements for filing via CM/ECF.  
20 Plaintiff shall file all documents electronically. All filings must indicate in the upper right hand  
21 corner the name of the magistrate judge to whom the document is directed.

22           Any document filed with the Court must be accompanied by proof that it has been served  
23 upon all parties that have entered a notice of appearance in the underlying matter. Plaintiffs

1 subject to the Court's E-Filing Initiative shall indicate the date the document is submitted for e-  
2 filing as the date of service.

3 (4) Non-State Defendants

4 As a registered user of the Court's electronic filing system, you must accept electronic  
5 service of all court filings (**except** original service of a complaint) by prisoner litigants housed at  
6 facilities actively engaged in the Prisoner E-Filing Initiative. Prisoner litigants incarcerated at  
7 facilities actively engaged in the Prisoner E-Filing Initiative are no longer required to serve their  
8 court filings on the Court or defendants by mail. Service by mail of your court filings to prison  
9 litigants housed in facilities actively engaged in the Prisoner E-Filing Initiative is also no longer  
10 required.

11 (5) Motions, Generally

12 Any request for court action shall be set forth in a motion, properly filed and served.  
13 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a  
14 part of the motion itself and not in a separate document. The motion shall include in its caption  
15 (immediately below the title of the motion) a designation of the date the motion is to be noted for  
16 consideration upon the Court's motion calendar.

17 Stipulated and agreed motions, motions to file over-length motions or briefs, motions for  
18 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),  
19 motions for default, requests for the clerk to enter default judgment, and motions for the court to  
20 enter default judgment where the opposing party has not appeared shall be noted for  
21 consideration on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions  
22 shall be noted for consideration no earlier than the third Friday following filing and service of the  
23 motion. *See* LCR 7(d)(3). All dispositive motions shall be noted for consideration no earlier

1 than the fourth Friday following filing and service of the motion. *Id.*

2 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-  
3 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday  
4 immediately preceding the date designated for consideration of the motion.

5 The party making the motion may electronically file and serve not later than 11:59 p.m.  
6 on the date designated for consideration of the motion, a reply to the opposing party's briefs and  
7 affidavits.

8 (6) Motions to Dismiss and Motions for Summary Judgment

9 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil  
10 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil  
11 Procedure should acquaint themselves with those rules. As noted above, these motions shall be  
12 noted for consideration no earlier than the fourth Friday following filing and service of the  
13 motion.

14 Defendants filing motions to dismiss based on a failure to exhaust or motions for  
15 summary judge are advised that they MUST serve a *Rand* notice concurrently with motions to  
16 dismiss based on a failure to exhaust and motions for summary judgment so that *pro se* prisoner  
17 plaintiffs will have fair, timely and adequate notice of what is required of them in order to  
18 oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941 (9th Cir. 2012). The Ninth Circuit  
19 has set forth model language for such notices:

20 A motion for summary judgment under Rule 56 of the Federal Rules of  
21 Civil Procedure will, if granted, end your case.

22 Rule 56 tells you what you must do in order to oppose a motion for summary  
23 judgment. Generally, summary judgment must be granted when there is no  
genuine issue of material fact – that is, if there is no real dispute about any  
fact that would affect the result of your case, the party who asked for

summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, **you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.**

*Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added).

Defendants who fail to file and serve the required *Rand* notice on plaintiff may have their motion stricken from the Court's calendar with leave to re-file.

(7) Direct Communications with District Judge or Magistrate Judge

No direct communication is to take place with the District Judge or Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk.

(8) The Clerk is directed to send copies of this Order and of the Court's *pro se* instruction sheet to plaintiff. The Clerk is further directed send a copy of this Order and a courtesy copy of Plaintiff's Complaint to the Washington Attorney General's Office, by email.

Dated this 21st day of May, 2018.



David W. Christel  
United States Magistrate Judge